

It was alleged to be a misbranded food (1) in that the statement, "Each Capsule Contains Not less than * * * B₁—45 Sherman (25 Int.) units," borne on the boxes, was false and misleading since the article contained not more than 15 International Units of vitamin B₁, equivalent to not more than 27 Sherman units of vitamin B₁; (2) in that the statement: "Vitamins A B₁ G D," borne on the boxes, was misleading since it represented that the article contained a consequential amount of each of the vitamins named, whereas it contained only an inconsequential amount of vitamins B₁ and G, and when consumed in the maximum dosage recommended and suggested, 2 capsules per day, it would supply not more than $\frac{1}{10}$ of the minimum daily requirement of an adult for vitamin B₁, and not more than $\frac{1}{40}$ of the minimum daily requirement of an adult for vitamin G.

The article was also charged to be an adulterated and misbranded drug as reported in drugs and devices notices of judgment, No. 919.

On September 29, 1941, the defendant entered a plea of not guilty. On April 15, 1943, the case having been submitted to the court on a stipulation of facts and briefs, the defendant was found not guilty of violating the provisions of the law applicable to foods, but was found guilty of violating the provisions applicable to drugs, and was fined \$100 on each of the 2 counts on which he had been convicted. Sentence, however, was suspended on 1 of the said counts. The court's decision of not guilty on the 2 counts charging the product to be a food was based on an opinion that under the terms of the Federal Food, Drug, and Cosmetic Act vitamin preparations are drugs, but are not foods. The opinion of the court is printed in notice of judgment No. 919, covering drugs and devices.

5771. Adulteration and misbranding of Sentinel A & D Vitamin Tablets. U. S. v. Forest City Products, Inc. Plea of guilty. Fine, \$150 and costs. (F. D. C. No. 10534. Sample No. 37737-F.)

On September 11, 1943, the United States attorney for the Northern District of Ohio filed an information against Forest City Products, Inc., Cleveland, Ohio, alleging shipment on or about January 12, 1943, from the State of Ohio into the State of Illinois of a quantity of the above-named product which was adulterated and misbranded.

The article was alleged to be adulterated in that a valuable constituent, vitamin A, had been in whole or in part omitted or abstracted therefrom since it was represented to contain 5,000 U. S. P. units of vitamin A in each tablet, whereas it contained not more than 2,000 U. S. P. units of vitamin A in each tablet.

It was alleged to be misbranded in that the statement in its labeling, which represented that each of the tablets contained 5,000 U. S. P. units of vitamin A; that each of the tablets contained $1\frac{1}{4}$ times the minimum adult daily requirement of vitamin A; and that each tablet contained the amount of vitamin A contained in $1\frac{1}{4}$ teaspoonfuls of cod liver oil of minimum U. S. P. strength was false and misleading since each tablet contained not more than 2,000 units of vitamin A, not more than $\frac{1}{2}$ of the minimum adult daily requirement of vitamin A, and not more than $\frac{1}{2}$ the amount of vitamin A contained in $1\frac{1}{4}$ teaspoonfuls of cod liver oil of minimum U. S. P. strength. It was alleged to be misbranded further in that the statement "Essential for health," appearing in its labeling, was misleading since it suggested and created in the mind of the reader the impression that the article was essential for health, whereas it was not; and in that certain words, statements, or information required by the law to appear in the labeling were not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices in the labeling) as to render them likely to be read and understood by the ordinary individual under customary conditions of purchase and use, in that the article purported to be and was represented for special dietary use by man by reason of its vitamin property in respect of vitamin A and vitamin D, and the statement of the proportion of the minimum daily requirements for such vitamins which would be supplied by the article when consumed in a specified quantity during a period of 1 day, which statement is required by regulations promulgated pursuant to the law, was printed on the bottom of the box in small and inconspicuous type.

On October 22, 1943, the defendant having entered a plea of guilty, the court imposed a fine of \$100 on the first count and \$50 on the second count, together with costs.